

INTRODUCTORY PROVISIONS

§303.1. General.

These sections are applicable to water rights in the Rio Grande Basin below Fort Quitman, and water rights in that portion of the Nueces-Rio Grande Coastal Basin in Starr, Hidalgo, Willacy and Cameron Counties whose source of water is the Rio Grande, excluding the Pecos and Devils watersheds. All other rules, regulations, or orders promulgated or issued by the commission are also applicable to these water rights unless in conflict with the provisions of this chapter, in which event this chapter shall govern.

§303.2. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

Account - The record of municipal and operating reserves; or the record of an allottee's water in storage in the Amistad-Falcon system, and the diversion of such water.

Accounting period - From the last Saturday of a month at midnight to the last Saturday of the following month at midnight.

Agent - A person designated by a water right holder to have the authority to request certification to divert, make diversions, and/or pay assessment charges.

Allocation - The distribution of the United States' share of water stored in the Amistad-Falcon system to the various accounts.

Allottee - A water right holder who has an account and who has the right to call on releases of water from the associated accounts.

Assessment - The authorized charges against water rights holders levied by the commission to finance watermaster operations.

Certification - Written authorization issued by the watermaster to divert water from the Rio Grande or its tributaries for a specific period of time.

Diversion facility - Any pump, canal system or other device.

Diverter - A water right holder, an agent or an exempt domestic and livestock user who takes water from the Rio Grande or its tributaries.

Hydroelectric rights - A water right that authorizes the use of available flow for hydroelectric power generation. No account will be established for the holders of hydroelectric rights.

Lower Rio Grande Valley - That portion of the Rio Grande Basin, including tributaries, in Texas from Falcon Dam downstream to the Gulf of Mexico, including that portion of the Nueces-Rio Grande

Coastal Basin located in Starr, Hidalgo, Willacy, and Cameron Counties, Texas, whose source of water is the Rio Grande.

(A) Reach I is that portion of the Lower Rio Grande between Falcon Dam and the International Boundary and Water Commission streamflow gage at Fort Ringgold.

(B) Reach II is that portion of the Lower Rio Grande between the International Boundary and Water Commission streamflow gage at Fort Ringgold and Anzalduas Dam and the Progreso Bridge.

(C) Reach III is that portion of the Lower Rio Grande between Progreso Bridge and the International Boundary and Water Commission streamflow gage near San Benito.

(D) Reach IV is that portion of the Lower Rio Grande between the Progreso Bridge and the International Boundary and Water Commission streamflow gage near San Benito.

(E) Reach V is that portion of the Lower Rio Grande between the International Boundary and Water Commission streamflow gage near San Benito and the Cameron County Water Control and Improvement District No. 6 river pumps.

(F) Reach VI is that portion of the Lower Rio Grande between Cameron County Water Control and Improvement District 6 river pumps and the International Boundary Commission streamflow gage near Brownsville.

(G) Reach VII is that portion of the Lower Rio Grande between the International Boundary and Water Commission streamflow gage near Brownsville and the Gulf of Mexico.

Measuring device - A device designed to indicate flow rate and amount, with instantaneous readout in cfs or gpm and a flow totalizer with a readout in acre-feet or gallons, to be accurate within 5.0%, said device to be approved by the watermaster. Any device operated and maintained by the International Boundary and Water Commission is considered satisfactory. On tributaries, any device approved by the watermaster is sufficient.

Middle Rio Grande - That portion of the Rio Grande Basin, including tributaries, in Texas upstream from Falcon Dam to Amistad Dam.

(A) Reach I is that portion of the Middle Rio Grande between Amistad Dam and the International Bridge at Del Rio.

(B) Reach II is that portion of the Middle Rio Grande between the International Bridge at Del Rio and the International Bridge at Eagle Pass.

(C) Reach III is that portion of the Middle Rio Grande between the International Bridge at Eagle Pass and the International Boundary and Water Commission streamflow gaging station at San Antonio Crossing.

(D) Reach IV is that portion of the Middle Rio Grande between the International Boundary and Water Commission streamflow gaging station at San Antonio Crossing and the International Bridge at Laredo.

(E) Reach V is that portion of the Middle Rio Grande between the International Bridge at Laredo and San Ygnacio.

(F) Reach VI is that portion of the Middle Rio Grande between San Ygnacio and Falcon Dam.

No charge water - Storm and flood water in the Rio Grande downstream from Amistad Dam that is designated by the watermaster, in accordance with the Texas Water Code, §11.0871, and with Texas Water Commission order dated August 4, 1981, and any subsequent orders, as being available for diversion and use by water rights holders.

Nondiverter - An agent or a water right holder who has water delivered to him by a diverter.

Proration period - The period determined on a monthly basis, when the United States' share of water in the Amistad-Falcon system is less than 50% of the total United States conservation storage.

Pump operation report - That part of the certification which the diverter returns to the watermaster after recording the amount of water actually diverted during the certification period.

Travel time - The time for released water to travel downstream to designated reaches on the Middle or Lower Rio Grande.

Tributary diverter - A water right holder, an agent or an exempt domestic and livestock user on the Rio Grande Below Fort Quitman and above Amistad Reservoir or on a tributary of the Rio Grande with no right to call for releases from Amistad or Falcon Reservoirs.

Upper Rio Grande - That portion of the Rio Grande Basin, including tributaries, in Texas from Amistad dam upstream to Fort Quitman, excluding the Pecos and Devils watersheds.

Usable balance - The quantity of water in acre-feet an allottee has available for use, and is based upon whichever is less:

(A) the sum of allottee's annual authorized amount of water minus actual use for the year to date, plus the allottee's contract water balance; or

(B) the amount in the allottee's storage account.

Water right - A right acquired under the laws of the state to impound, divert, and/or use water.

Water right holder - One who owns a water right.

WATERMASTER-REGULATORY FUNCTIONS

§303.11. Records of Diversions--General.

(a) The watermaster shall locate, number by river mile or other method, and rate as to capacity all authorized diversion facilities on the Texas bank along the Rio Grande and tributaries, and the owner or operator thereof shall be advised in writing of these facts. When a permanent diversion facility is replaced at the same location or when any changes in rating are made, the diverter shall immediately inform the watermaster prior to diversion. Any change in the location of the diversion facilities and place of use on the Middle or Lower Rio Grande shall be made pursuant to §295.71 of this title (relating to Applications to Amend a Permit) and §295.158(c) of this title (relating to Notice of Amendments to Water Rights), not requiring mailed and published notice. Any change in the location of the diversion facilities and place of use on the Upper Rio Grande and tributaries to the Rio Grande shall be made pursuant to §295.71 of this title (relating to Applications to Amend a Permit) and §295.158(c) of this title (relating to Notice of Amendments to Water Rights), not requiring mailed and published notice; or §295.158(b) of this title (relating to Notice of Amendments to Water Rights), requiring mailed and published notice.

(b) Each diverter shall request written certification from the watermaster prior to diverting water by identifying the specific certificate of adjudication to be used and the pump number of the pump to be used. When a diverter orders water for a nondiverter, the diverter may request written certification under such diverter's certificate of adjudication or under the certificate of adjudication of the nondiverter to which the diverter is delivering water, but shall report the amount of water diverted for the nondiverter as provided in §303.12(d) of this title (relating Mainstem Middle and Lower Rio Grande). Certifications will be granted only for diversion from authorized diversion points associated with that water right. Certifications for irrigation water rights will be granted only for delivery of water to the authorized tract(s) covered by the water right or approved contractual sale. Certifications are limited to a maximum diversion period of one calendar month on the mainstream of the Lower and Middle Rio Grande and to one year on the Upper Rio Grande and all tributaries of the Rio Grande.

(c) No certification will be issued which exceeds maximum annual authorization, in combination with any other certifications issued for that certificate of adjudication in any one year. The watermaster is authorized to cancel a certification or to refuse or modify a request for the diversion of water. Except as provided in §303.44 (relating to the Administration by Watermaster), the watermaster will refuse a request of a diverter if the water rights holder whose water is to be diverted does not have complete ownership records on file with the Commission. The watermaster will maintain a list of all water rights holders with incomplete ownership records and will remove names from that list after the executive director notifies the watermaster that the ownership record has been completed.

(d) Each diverter shall post at or near his diversion facility the watermaster certification authorizing the diversion of water. In the event the certification has been granted but is not received by the diverter by the time diversion is authorized, the diverter shall post a written note at or near the diversion facility in lieu of the watermaster certification, stating the pump number and the dates and hours of the request and that verbal authority was given by the watermaster. It is the responsibility of the diverter to make certain that the written note conforms to the time and conditions shown on the watermaster certification. The watermaster certification, upon receipt, shall replace the written note.

(e) Each diverter shall install and maintain measuring devices at the authorized point of diversion which will provide for accurate measurement and accounting of the quantities of water diverted. The installation, maintenance, and operation of measuring devices by the diverter shall be subject to approval of the watermaster. The diverter must ensure the accessibility of the measuring device, so it can be conveniently and safely located and checked by the watermaster. The diverter shall be liable for all expenses incurred in the acquisition, installation, maintenance, and operation of measuring devices.

(f) Each diverter whose diversions are not measured and reported by the International Boundary and Water Commission shall maintain accurate records of water diverted. All pumps used during the reporting period, including borrowed and rented pumps, shall be shown by number on the pump operation report with metered readings or with the number of hours operated for each reporting period. The watermaster will accept as timely all pump operation reports for each diversion pump received within seven days or postmarked within five days from the termination of the certification period. If the pump operation report is incomplete or not timely filed, the watermaster will refuse to issue a new certification until the complete report is filed. Pump operation reports, other than International Boundary and Water Commission diversion reports, received in the watermaster's office are unacceptable:

- (1) if unsigned; or
- (2) if the measuring device reading is not shown.

(g) Each diverter shall divert water in accordance with the watermaster certification.

(h) Each water right holder or his designated agent shall submit to the commission a written report of the amount of water actually diverted and used during the preceding calendar year under a specific water right in accordance with §295.202 of this title (relating to Reports) and/or §303.54(d) of this title (relating to Responsibilities of Buyer and Seller). The water right holder is responsible for reporting actual use based on the records kept by the water right holder or diverter. The watermaster will not fill out annual surface water use reports.

§303.12. Records - Mainstem Middle and Lower Rio Grande.

(a) The watermaster shall maintain an accurate inventory of water in Falcon and Amistad Reservoirs and shall maintain records and institute necessary procedures with the International Boundary and Water Commission as may be appropriate to perform this function.

(b) The watermaster shall timely submit a monthly report to each allottee, or his designated agent, showing the current status of each allottee's account. The period of time covered by each report shall be from the last Saturday of a month at midnight to the last Saturday of the following month at midnight. The report shall designate the date for the end of the watermaster's next reporting period. Each allottee shall apply in writing to the watermaster for correction of any alleged errors in the report within 20 consecutive days following distribution of the monthly report.

(c) A diverter shall request written certification in advance to allow travel time for the released water to reach the river diversion point as scheduled. Each reach of the river shall constitute one day of travel time from Amistad Dam downstream. Whenever there is a flow of water in the Rio Grande in excess of

downstream requirements, the watermaster may waive travel time requirements to allow immediate diversions, provided that the diverter shall post the certification at or near his diversion facility.

(d) Nondiversers who have water diverted and transported for them from the Rio Grande by an authorized diverter or carrier shall have the diverter place the order with the watermaster for the amount of water desired. Each diverter or carrier furnishing water to a nondiverter is required to furnish a report within five days of the last Saturday of the month to the watermaster showing the amount of water in acre-feet delivered to the nondiverter including transportation losses. If a nondiverter uses in excess of the amount to which he is entitled the excess amount shall be charged against the account of the diverter.

(e) Diversions shall be charged against the appropriate accounts as follows.

(1) A diverter shall be charged with the actual amount diverted, without being penalized, if the total diversion is within plus or minus 10% of the amount requested pursuant to certification.

(2) A diverter shall be charged with 90% of the certification amount if the total diversion is less than 90% of the amount requested pursuant to certification.

(3) If the quantity of water diverted is more than 110% of the amount requested pursuant to certification, then the diverter will be charged with the actual amount of water diverted and the provisions of §303.31 of this title (relating to General) will apply.

(4) The watermaster shall have the discretion to waive the penalties contained herein for excessive or inadequate diversions due to circumstances beyond the control of the diverter.

(5) In accordance with Texas General Law, 2, Chapter 35, 1981, at page 75, water diverted by Maverick County Water Control and Improvement District Number 1 through its gravity irrigation diversion system that is returned to the stream from which it was taken at specific metered points or places operated by the International Boundary and Water Commission is surplus water as defined in said law and is not appropriated water. For water accounting and reporting purposes, surplus water shall not be counted as a part of the total amount of water authorized to be diverted for beneficial use under the district's water rights. Surplus water does not include water flowing into the Rio Grande from tributaries which flow into the Maverick system.

(f) The burden shall be upon the diverter on the Middle and Lower Rio Grande to satisfy the watermaster that the diverter could not receive his total requested amount of water during the certification period because of the acts of other diversers or because of other clearly shown extenuating circumstances, and if such is shown, appropriate adjustments may be made by the watermaster.

(g) If an allottee on the Middle or Lower Rio Grande has to terminate pumping before the end of the certification period, the allottee shall notify the watermaster as soon as possible. The effect of the termination in pumping is a termination in the certification. A new certification must be issued before the diverter may renew pumping.

(h) Use of no charge water shall not be charged against the allottee's annual surface water use limit or against the allottee's account. The total amount of no charge water diverted must be stated separately in the annual surface water use report sent to the Commission.

§303.13. Records - Upper Rio Grande and All Rio Grande Tributaries.

(a) Diverters from the Upper Rio Grande and all Rio Grande tributaries must comply with the requirements of §303.11 of this title (relating to Records of Diversions-General).

(b) A request for releases from Falcon and Amistad Reservoirs is not applicable. The watermaster will coordinate with the International Boundary and Water Commission regarding stored water released by Mexico to the Rio Conchos which contributes to the flow of the Rio Grande in the reach from Presidio to Amistad Reservoir.

(c) Diverters shall make reports to the watermaster based on the information recorded on the pump operation report. The watermaster will advise these diverters of the report schedule (monthly, quarterly, yearly) required.

(d) Diverters may be issued a one-year certification by the watermaster for up to the total annual authorized amount of the diverter's water right.

(e) If complaints are received by the watermaster concerning insufficient water to satisfy senior and superior water rights, the watermaster will conduct an investigation and may institute procedures to distribute the available waters, such as:

- (1) order alternate pumping days for specified diverters;
- (2) limit the pumping time;
- (3) impose streamflow restrictions;
- (4) order pumping to cease or pump at a decreased diversion rate until the situation is improved; and/or
- (5) any other procedures needed to ensure water use is protected based on the priority system in the Texas Water Code.

§303.14. Appeal of Watermaster Actions.

Any person dissatisfied with any action of a watermaster may apply to the executive director for relief under the Texas Water Code, §11.326.

§303.15. Appointment of An Agent.

An agent for a water right holder who requests water shall submit to the watermaster a document signed by all the water right holders indicating the owner-agent relationship and the duration of the agent authorization. The owner is responsible for the designation of one agent for the payment of assessments

§303.16. Amistad/Falcon System.

The watermaster will request releases from Amistad and Falcon Reservoirs for authorized domestic, municipal, industrial, irrigation, and other uses in such a manner which promotes the efficient use and optimum yield of the United States' share of water in the Amistad/Falcon System, consistent with the 1944 Treaty between the United States and Mexico.

§303.17. Diversion Facilities.

It is the responsibility of all diverters to insure that their diversion facilities are capable of diverting the quantity of water authorized pursuant to certification, even under low or high water levels.

ALLOCATION AND DISTRIBUTION OF WATERS

§303.21. Accounts-Amistad/Falcon Reservoirs.

(a) For the purpose of establishing accounts in Amistad and Falcon Reservoirs, the two reservoirs are considered to constitute a single storage system. Accounts in the Lower and Middle Rio Grande are based upon a water right's annual authorization in acre-feet. Water rights for irrigation and mining purposes are considered as having irrigation priority rights and therefore are included in the irrigation accounting system.

(b) When there is adequate water to do so, the watermaster shall maintain the following accounts:

- (1) a reserve of 225,000 acre-feet of water for domestic, municipal and industrial uses;
- (2) an operating reserve which is to fluctuate between 380,000 acre-feet and 275,000 acre-feet of water based on the monthly levels of the Amistad-Falcon Reservoir system.
- (3) the accounts for irrigation uses and all other uses.

(c) The operating reserve is to be calculated monthly by multiplying the percentage of total U.S. Conservation storage capacity in the system times the maximum operating reserve of 380,000 acre-feet. The calculated reserve cannot be less than 275,000 acre-feet of water except as provided by §303.22(e) of this title (relating to Allocations to Accounts). The operating reserve is necessary to provide for: loss of water by seepage, evaporation, and conveyance; emergency requirements; and adjustments of amounts in storage as may be necessary by finalization of provisional computations by the International Boundary and Water Commission.

§303.22. Allocations to Accounts.

(a) Allocations shall be based on water in the usable storage of Falcon and Amistad Reservoirs. Such storage shall be computed as the total storage in Amistad and Falcon Reservoirs as reported by the International Boundary and Water Commission on the last Saturday of each month less the amount of water in dead storage. To determine the amount of water to be allocated to the various accounts, computations shall be made in the following sequence:

- (1) from the amount of water in usable storage, deduct 225,000 acre-feet to re-establish the reserve for municipal, domestic and industrial uses;
- (2) from the remaining storage, deduct the total end-of-month account balances for all Lower and Middle Rio Grande irrigation and mining allottees;
- (3) from the remaining storage, deduct the operating reserve determined in accordance with §303.21(b)(2) of this title (relating to Accounts-Amistad/Falcon Reservoirs);
- (4) the remaining storage will be allocated to the irrigation and mining accounts.

(b) The allotment for irrigation and mining uses shall be divided into Class A and Class B. Class A rights include all Class A water rights in the Lower and Middle Rio Grande; Class B rights include all Class B water rights in the Lower and Middle Rio Grande. Class A allottees shall receive 1.7 times as much water as that allotted to Class B allottees.

(c) Allottees who do not put any of the water in their account to beneficial use within two consecutive calendar years shall have that account reduced to zero. No subsequent allocations will be made until the allottee advises the watermaster that water is expected to be used.

(d) At no time shall the watermaster allow an allottee to accumulate in storage more than 1.41 times the annual authorized right in acre-feet.

(e) No allocation will be made to a water right holder when the water right or a portion of the right does not identify a specific place or places of use. Only that portion of a water right which authorizes a specific place of use will receive an allocation based number of acre-feet recognized to be used tract.

(f) If the amount of usable water is insufficient to carry out all the steps specified in subsections (a) and (b) of this section, the computations will be made in the specified sequence, with the following adjustments.

(1) If the watermaster determines there is insufficient water for allocation under subsection (b) of this section or other valid reasons for not allocating the available water, the unallocated storage after subsection (a)(3) of this section will be held for the next allocation period. In general, water will be allocated under subsection (b) of this section when there is at least 50,000 acre-feet available for that purpose.

(2) If the balance available for the operating reserve is less than 275,000 acre-feet, but greater than 150,000 acre-feet, that amount will be the amount allocated to the operating reserve. If it is less than 150,000 acre-feet, the watermaster will deduct from the irrigation and mining accounts, via negative allocations, the amount necessary to provide 150,000 acre-feet for the operating reserve account. A negative allocation will be made on a prorata basis, from all irrigation and mining accounts containing water at the time, based on the amount of water in such accounts. The watermaster will keep accurate records of the negative allocations affecting each irrigation and mining account. Once negative allocations have ceased and sufficient water is available for positive allocations, all accounts from which water has been deducted will be restored to the amount of water in each account prior to the negative allocation period and any new allotments will be made in accordance with subsections (a) and (b) of this section.

(g) For each month of a proration period, the total amount of water authorized to be used for that calendar year by each of the four water rights listed in the following table will be incrementally reduced or restored in the following manner. When the United States' share of storage in the Amistad-Falcon system is less than 50% of its total storage capacity, each 1.0% drop or rise in reservoir storage will reduce or increase the unprorated annual authorization by a corresponding amount listed under proration reduction in the following table. Once the prorated annual authorization has been reached, no further reductions will be made. During any month in which proration has been in effect, any allocation for the listed water rights will be based on the reduced unprorated annual amount. When conditions are such that it appears that the initiation of a proration period is imminent, the watermaster shall, at least two months in advance, advise the four affected water right holders of the anticipated proration.

Certificate of Adjudication	Annual Authorization (Acre-feet)		Proration Reduction (Acre-feet)
	Unprorated	Prorated	
23-802	33,948.85	20,000.00	1,162.40
23-837	4,375.00	3,656.00	59.90
23-850	3,750.00	2,000.00	145.80
23-851	2,522.50	1,642.00	73.40

(h) The watermaster may take any actions appropriate to prevent the waste of water or to alleviate emergencies.

§303.23. Distribution of Available Waters - Upper Rio Grande and All Rio Grande Tributaries.

(a) Distribution of waters in the Upper Rio Grande and all Rio Grande tributaries shall be based upon the amount of water authorized per annum and the priority date of the water right. Water rights holders in the Upper Rio Grande and all Rio Grande tributaries are entitled to waters flowing in these watercourses which can be beneficially used and which are used in accordance with §303.11 of this title (relating to Records of Diversions-General) and §303.13 of this title (relating to Records--Upper Rio Grande and All Rio Grande Tributaries). All waters which cannot be so used shall be available to the Lower and Middle Rio Grande system.

(b) Total certifications issued in a year shall be limited to the water rights holder's annual authorization.

(c) In periods of shortage, on the watermaster's initiative or when requested by a water rights holder on the same tributary or on the Upper Rio Grande, the watermaster may impose limitations on the time, rate and/or quantity of water diverted.

ENFORCEMENT REGARDING WATERMASTER OPERATIONS

§303.31. General.

For a violation of any statutes of the Texas Water Code, or of the terms of a water right, or commission order or rules, the watermaster or executive director may pursue appropriate enforcement action if voluntary compliance is not promptly achieved.

§303.32. Enforcement Actions.

(a) The watermaster may seek voluntary compliance by ordering that:

- (1) a violator cease and desist any unauthorized diversion, taking, impoundment, transfer, or use of state water;
- (2) the owner of a lawful dam on a tributary pass inflows sufficient to satisfy the needs of downstream senior and superior rights; or
- (3) any person in violation of the Texas Water Code, commission rules, permit, certificate of adjudication, or commission order take necessary actions to achieve compliance.

(b) In the absence of voluntary compliance in a timely manner, the watermaster may:

- (1) lock headgates or pumping facilities or take other necessary actions to effectively cease any unauthorized diversion or impoundment of state water;
- (2) refuse to issue a certification; or
- (3) refer the violation to the executive director.

(c) The executive director may:

- (1) seek voluntary compliance;
- (2) refer a case to the attorney general for any appropriate legal remedy in a court of competent jurisdiction, which may include a penalty assessment of not more than \$1,000 for each day the violator continues the taking, diversion, or appropriation as set forth in the Texas Water Code, §11.082;
- (3) seek an action before the commission culminating with the issuance of an appropriate order, which if subsequently violated, may be referred to the attorney general for appropriate action in a court of competent jurisdiction; or
- (4) seek any other appropriate remedies or actions which are available at law.

§303.33. Appeal.

All appeals from actions or decisions of the watermaster shall be in accordance with the Texas Water Code §11.326(f).

§303.34. Violations.

(a) It shall be a violation for any person to do the following:

(1) divert, impound, or use any water from the Rio Grande or its tributaries, either personally or through another, without proper authorization under the Texas Water Code, these sections and any applicable final judgment rendered by a court of competent jurisdiction;

(2) refuse to allow, or to interfere with, the inspection of any land, natural waterway, artificial waterway, or diversion facility by an agent or employee of the executive director that would assist the commission in the discharge of its duties;

(3) interfere with or refuse to comply with the execution of any order of the watermaster, executive director, or commission;

(4) break, tamper with, or mutilate any seal or other device used to enforce orders of the commission, executive director, court, or watermaster;

(5) make or send to the watermaster, executive director, or commission any false or misleading statement, or submit any untrue data in any pump operation report or surface water use report; or

(6) violate any statute, rule, or order of the commission or watermaster.

(b) The list of violations in subsection (a) of this section is not exclusive.

AMENDMENTS TO AND SALES OF WATER RIGHTS

§303.41. Sale of Water Rights.

(a) The owner of a water right may convey his water right as provided by §297.81 of this title (relating to General Rules of Conveyance) and §297.82 of this title (relating to Duty to Inform Executive Director). The purpose and place of use shall not be changed without authorization from the commission. Owners of water rights shall promptly inform both the executive director and the watermaster of any transfers of water rights. The new owner must file with the executive director all required documents as identified in §297.83 of this title (relating to Recording Conveyances of Water Rights).

(b) If a tract of land to which a smaller water right acreage is appurtenant is owned by more than one person in divided interests, a water right partition agreement is required among all the owners of said tract of land before any one of the owners can be authorized by the watermaster to divert water. However, if the owners fail to submit a water right partition agreement within one month after being notified by the executive director that such an agreement is needed, the executive director shall administratively divide the water rights among the owners on a prorata basis by acreage. The owners involved may request that the executive director grant an extension of the one month deadline not to exceed six months if extenuating circumstances exist. If the executive director does not grant the extension, the division will be made on a prorata basis. The executive director will recognize the prorata shares until changes are made by valid partition agreement.

§303.42. Amendments.

The commission will consider applications to amend water rights. Transfer of the point of diversion and/or place of use of water rights from the Lower and Middle Rio Grande to above Amistad Reservoir are prohibited; however, transfers may be made between the mainstem of the Lower Rio Grande and the mainstem of the Middle Rio Grande. Applications must meet all of the requirements for an original water permit as set out in Chapter 295 of this title (relating to Water Rights, Procedural) and Chapter 297 of this title (relating to Water Rights, Substantive).

(1) An applicant shall submit to the executive director an application prepared to reflect the desired change(s) and executed as provided in these sections.

(2) Determination of the type of notice required will be made by evaluating the applications according to §295.158 of this title (relating to Notice of Amendments to Water Rights). One exception to this is that changes in the purpose of use, rate of diversion, point of diversion, and place of use for water rights held in and transferred within and between the mainstems of the Lower Rio Grande, Middle Rio Grande and Amistad Reservoir will not require mailed and published notice.

§303.43. Conversion of Water Rights.

The purposes of use included in municipal priority rights are domestic, municipal and industrial. The purposes of use included in the Class A and B priority rights are irrigation and other purposes of use, excluding domestic, municipal, industrial, non-consumptive recreation, and hydro-electric. Unless otherwise stated in a certificate of adjudication, one acre of irrigation water right in the Lower Rio Grande will be equivalent to 2.5 acre-feet of water per annum. All Class A and B priority rights in the Lower and Middle

Rio Grande which have been or will be acquired for domestic, municipal or industrial use shall be amended to authorize the change in purpose of use and converted to receive a definite quantity of water in acre-feet per annum.

(1) One acre-foot of Class A irrigation water right shall be converted to 0.5 acre-feet of water per annum for either domestic, municipal or industrial purposes; one acre-foot of Class A irrigation water right shall be converted to 0.4 acre-feet of water per annum for either domestic, municipal or industrial purposes.

(2) An irrigation or mining water right which has been amended and converted to a municipal priority shall be allocated water on an equal basis with stipulated domestic, municipal and industrial water rights recognized in the final judgment rendered in the Lower Rio Grande Valley water case and the final judgment in the adjudication of water rights on the Middle Rio Grande.

§303.44. Administration by Watermaster.

Owners of water rights shall promptly inform the executive director of any change of ownership of water rights. Thereafter, if the new ownership record is not complete, the executive director shall inform the alleged owner by letter that ownership documents must be filed within 30 days and approved by the executive director. During a 60-day period following the date of the executive director's letter, the watermaster will honor requests by the alleged owner for releases of water and/or for certification in accordance with the water right. After the 60-day period, no allocations will be made until the executive director notifies the watermaster of the approved change in ownership. Requests for extension of the initial 60-day period must be submitted in writing to the executive director prior to the end of the 60-day period. If the extension is granted, the watermaster may make allocations, issue certifications and/or order releases for the alleged owner. If the extension is not granted, the watermaster will not issue a certification, make releases or make allocations for the alleged owner until the executive director notifies the watermaster that ownership has been changed to include the new owner. If a water right amendment is required for the new owner to use water, the watermaster shall not honor requests by the new owner for water under that water right until the amendment has been granted by the commission.

CONTRACTUAL SALES

§303.51. General Policy.

Verified owners of water rights in the Middle and Lower Rio Grande with the right to call on releases from the Amistad-Falcon system may contract for the sale of all or part of their annual authorized amount of use to other water rights holders or their agents in the Middle and Lower Rio Grande as long as all of the contractual sales rules are complied with. The resale of purchased water is prohibited. The use of contract sale water by buyer will not go to the perfection of seller's appropriative right. All existing contracts shall be filed with the executive director in accordance with this section.

§303.52. General Filing Requirements.

(a) If the sale of water is for a purpose of use other than that authorized in the seller's water right, then the supplier must file an application to amend that right and have the right amended before any sale may be approved.

(b) If the use of water under the contract involves a change in the place of use, diversion point or diversion rate, an amendment to sellers or buyers water right is not required. Seller or buyer shall file a copy of the executed contract with the executive director for approval. Water diverted pursuant to this section shall be diverted from a diversion point and used on a tract of land identified in commission records in accordance with §303.53(b) of this title (relating to Documents Needed to File).

(c) The seller must be a verified owner of a water right. If the commission does not have adequate ownership records of the seller, then no sale may be approved by the executive director.

(d) All contracts must be filed with and approved by the executive director as complying with all the sections relating to contractual sales. No deliveries of sold water will be made by the watermaster until all requirements are met.

(e) The executive director will file the original approved contracts in the seller's permanent water right record and will send a copy of approved contracts to the watermaster.

(f) No contract approval is required for sales of water by a district when the district's distribution facilities are used to deliver the water to the buyer for purposes authorized by the district's water right.

(g) Seller can not use and/or sell in excess of his water right's annual authorized amount of use in any calendar year.

§303.53. Documents Needed to File.

(a) A contract of sale of water to be filed with the executive director in accordance with §303.52(d) of this title (relating to General Filing Requirements) shall indicate all of the following:

(1) the specific certificate of adjudication or other water right under which the water is being sold;

is to be used;

- (2) the specific certificate of adjudication or other water right under which the bought water

- (3) the name and address of the seller and buyer;

- (4) the total quantity of water being purchased in acre-feet;

- (5) the purpose of use for which the water is to be used;

- (6) the cost of water to the buyer per acre-foot;

- (7) the diversion point to which the buyer is requesting deliveries to be made;

- (8) the effective date and termination date of the contract (contract period can not exceed one year) the acreage to be irrigated, if applicable; and

- (9) the contract executed by all verified owners of the water right from which water is purchased.

(b) The contract will be accompanied by an aerial photograph or United States Geological Survey topographic map with the location of diversion points and areas to be irrigated described thereon.

(c) The executive director may require any additional information needed to approve the contract, including any agreements with diverters if the buyer is not pumping from his own diversion point and deeds of any tracts to be irrigated.

§303.54. Responsibilities of Buyer and Seller.

(a) Both buyer and seller must comply with all Texas Water Commission rules and watermaster orders.

(b) The buyer must obtain a certification from the watermaster before pumping.

(c) The buyer and seller are solely responsible as to the resolution of conflict regarding the terms and conditions of a water contract sale.

(d) The seller is responsible for reporting all sales of water on the yearly surface water use reports. The buyer must also report his use of purchased water separately from his water right on his yearly surface water use report.

§303.55. Accounting for Contract Sale Water.

(a) The watermaster will transfer the full amount of water, or portion thereof, specified in an approved contract from the seller's to the buyer's account upon contract approval.

(b) Upon transfer of contract sale water to buyer's account, subsequent use of water by buyer will be deducted from the contract water balance until the contract water balance equals zero or until the contract expiration date.

(c) Any contract water balance remaining in buyer's account at the contract expiration date will be deducted from buyer's account and will be available for allocation to the system reserves and accounts according to §303.22 of this title (relating to Allocations to Accounts).

(d) Buyer may not sell any water via contract as long as his bought water balance is greater than zero.

(e) At no time will buyer's or seller's irrigation storage account exceed 1.41 times the water right holder's recognized amount in acre-feet.

EXCESS FLOW PERMITS

§303.61. Excess Flow Permit.

An excess flow permit authorizes the use of the Texas share of the Rio Grande below the International Boundary and Water Commission gaging station near Brownsville, Texas, (United States Geological Survey (U.S.G.S.) Identification (ID) Number 08475000) for irrigation purposes when there is unanticipated flow which would pass unused to the Gulf. The permit holder does not have a call on storage from Amistad or Falcon Reservoirs nor shall priority be attached to such flows on any water availability analysis for any possible future reservoirs on the Rio Grande. Permittee must contact the watermaster prior to diversion to obtain a certification and to determine whether water is available at the authorized point of diversion excluding releases made by the watermaster for water rights holders below permittee's diversion point. Application requirements are the same as those required for the Texas Water Code, §11.121, permits. As between holders of this type of water right, the priority will be first in time, first in right. Permits previously authorized as surplus water permits will be considered henceforth as excess flow permits.

FINANCING RIO GRANDE WATERMASTER OPERATIONS

§303.71. Costs of Administration.

In accordance with the Texas Water Code, §11.329, holders of water rights that are administered by the Rio Grande watermaster shall reimburse the commission for the expenses of the watermaster operation. An assessment account shall be established for each water right, or for each authorization thereunder by category of use. The total assessment for each account shall be the sum of a uniform base charge and, as applicable, a use fee and a storage fee. Following a public hearing, the commission shall issue an order approving the assessment income needed for the Rio Grande Watermaster for the next fiscal year. The order shall also specify the base charge per account and the reinstatement fee for delinquent assessment payment. At least 30 days prior to the commission holding such a hearing, the executive director shall file with the commission a copy of the proposed budget. On or before September 1, 1989, the commission shall review this section for any appropriate changes.

§303.72. Determination of Assessment Rates.

(a) After a commission order is issued approving the assessment income needed for the next fiscal year, the executive director shall calculate assessment rates for water use and storage based on the following formula:

$$\text{Municipal Assessment Rate} = \frac{I - M(N)}{(RF_s)(AF_s) + AF_1 + (RF_2)(AF_2) + (RF_3)(AF_3) \dots (RF_n)(AF_n)}$$

Where:

- I : Income needed to meet the adopted budget
- M : Base charge per account
- N : Total number of accounts to be assessed in the water division
- n : Code number corresponding to a category or type of use:
- RF_n : Rate factor for each of the following categories of use:

municipal	-	RF1 = 1.00	recharge	-	RF7 = 0.50
industrial	-	RF2 = 1.00	salt water	-	RF8 = 0.10
irrigation	-	RF3 = 0.80	spreader dam diversion	-	RFg = 0.40

recreation - RF6 = 1.00

(3) the storage fee, which is calculated by multiplying the total amount of water authorized for storage under that account by the storage assessment rate as determined by §303.72 of this title (relating to Determination of Assessment Rates). For any water right authorizing storage and also more than one type

of use, a storage fee for the total storage authorization shall be applied to only one of the assessment accounts associated with that water right.

(b) The annual assessment shall be paid to the executive director in advance of expenditures. The executive director shall specify the dates by which payments shall be due, and may provide for payments in installments. Penalties and interest for the late payment of fees shall be assessed in accordance with Chapter 12 of this title (relating to Payment of Fees). If fees are paid in installments, penalties and interest for late payment shall be computed on the amount of the installment due. The executive director shall transmit all collections to the state treasurer to be held in a special fund to provide for the cost of the Rio Grande watermaster operation.

(c) For diversions of no-charge water in accordance with the August 4, 1981 Texas Water Commission order and any subsequent orders relating to the intermittent temporary diversion and use of Rio Grande waters, and for diversions of excess flow water in accordance with water rights authorizing such diversions, assessments will be levied in the fiscal year following the year of the diversion, and will be based on the amount shown by watermaster records to have been diverted. Assessment rates for no-charge and excess flow usage will be the same as for regulating assessments for the particular uses to which the no-charge or excess flow water was applied during the year of the diversion. No assessments will be made for use of less than 50 acre-feet of no-charge or excess flow water, and no base charge or storage fee will be applied. The amount of assessment income for no-charge and excess flow uses will not be considered directly in determining the amount of income needed under §303.71 of this title (relating to Costs of Administration).

(d) Water shall not be diverted, taken, stored, or used by any diverter or agent while any assessment payment is delinquent; neither shall an allottee be allocated any additional water or delivered any water until all assessments, plus any applicable reinstatement fees, are received by the executive director. Once the assessments and reinstatement fees are paid in full, an allottee's requests for water will be honored only to the extent water remained in the storage account before the first date of the delinquency in payments, and to the extent water remained in the storage account under §303.22 of this title (relating to Allocations to Accounts). An allottee's storage account will be reduced to zero if the assessment and any applicable reinstatement fees are not paid within a one-year period after the first assessment due date.

(e) On or before September 1, 1989, the commission shall review this section for any appropriate changes.

Adopted January 22, 1997

Effective February 14, 1997